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OFFICE OF PETITIONS

In re Application of
Schaumont et al.
Application No. 09/873,553
Filed: June 4, 2001
Attorney Docket Number:
IMEC65.1CP1C1

DECISION ON PETITION

This is a decision on the petition filed August 23, 2002, requesting that the above-identified application be accorded a filing date of June 4, 2001, with drawing figures 1a-24 as part of the original disclosure.

The petition is granted.

The application was deposited on June 4, 2001. On June 20, 2002, 2002, the Office mailed a Withdrawal of Previously Sent Notice, withdrawing a Notice sent on August 8, 2001, and also mailing a "Notice of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

Petitioner responds with the instant petition wherein Petitioner avers that the drawings in the above-identified application were incorporated by reference to prior application 09/237,549.

Initially it is noted that a review of the file reveals that the specification contains method claims (i.e., claims 24-37 and 41-53). As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing

figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In applications filed without all of the drawing figure(s) referred to in the specification, the MPEP § 601.01(g) states that a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In this instance, a petition is not necessary to add the drawing figures. Applicants may add figure(s) described in the specification on the basis that the drawings are not new matter. New drawings may be entered by the primary examiner without a petition so long as the drawings contain no new matter. See, MPEP § 608.02(a).

MPEP 201.06(c) states:

. . . an applicant may incorporate by reference the prior application by including, in the continuation or divisional application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated by herein by reference." The statement may appear in the specification or in the application transmittal letter The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. (emphasis supplied).

In view of the above, the Notices mailed June 20, 2002, were mailed in error and are hereby withdrawn.

This application is being forwarded to the Office of Initial Patent Examination, Customer Corrections, for further processing, with the filing date of June 4, 2001, and an indication that no drawings were required nor present on filing.

No petition fee is required and a refund of the petition fee has been credited to Petitioner's deposit account as authorized in the instant petition.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

Christina Patricia Donnell for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Conferee: Christina Donnell